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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949 1950

No. [redacted] 46

GALVESTON CHAMBER OF COMMERCE AND HOUSTON PORT AND TRAFFIC BUREAU,

*Appellants,*

*vs.* [redacted]

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AMERICAN BARGE LINE COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

# STATEMENT AS TO JURISDICTION

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

**Civil Action No. 49 C 1434**

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL.,

*Plaintiff,*

*vs.*

UNITED STATES OF AMERICA, ET AL.,

*Defendants*

## STATEMENT OF GALVESTON CHAMBER OF COMMERCE, ET AL. AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES ON DIRECT APPEAL.

Galveston Chamber of Commerce and Houston Port and Traffic Bureau, intervening complainants in the above captioned case, having this day presented their petition for direct appeal therein, now file this their statement of the basis upon which they contend that the Supreme Court of the United States has jurisdiction to review the final decree and should exercise such jurisdiction. This is done in conformity with Rule 12 of the Supreme Court of the United States.

### Jurisdictional Statutory Provisions and Court Decisions Thereunder

The decree in question was entered by a statutory three judge court specially convoked under and by virtue of the

provisions of the Judicial Code, 28 U. S. C. § 1336, 1398, 2284, and 2321-2325, inclusive.

The Supreme Court has jurisdiction to review the decree by direct appeal under the Judicial Code, 28 U. S. C. § 1253 and 2101 (b). These provisions represent a consolidation and continuance of the substance of statutory provisions previously in effect, under which appeals were taken in many cases such as the following. *United States* v. *Capital Transit Co.*, 325 U. S. 357; *United States* v. *Detroit & Cleveland Navigation Co.*, 326 U. S. 236; *United States* v. *Pierce Auto Freight Lines*, 327 U. S. 515; *Interstate Commerce Commission* v. *Mechling*, 330 U. S. 567; *New York* v. *United States*, 331 U. S. 284; and *Ayrshire Collieries Corp.* v. *United States*, 335 U. S. 573.

## Statutes Involved in the Merits of the Case

The case involves:

The Interstate Commerce Act, which opens with a declaration of national transportation policy to be followed in the administration of the act. Among other things, it calls for fair and impartial regulation of all modes of transportation subject to the act, to recognize and preserve the inherent advantages of each and to avoid unjust discriminations, undue preferences and unfair or destructive competitive practices.

Section 1(1)(a) of the same act, 49 U. S. C. 1(1)(a), which provides that it applies to traffic moving partly by water and partly by rail as well as to all-rail traffic.

Section 1(5)(a), of the same act, 49 U. S. C. 1(5)(a), which provides that all charges for transportation must be just and reasonable.

Section 3(1), of the same act, 49 U. S. C. 3(1), which prohibits undue preference of shippers, localities, ports, etc.

Sections 13(1), of the same act, 49 U. S. C. 13(1), 13(2) thereof, 49 U. S. C. 13(2); 14(1) thereof, 49 U. S. C. 14(1); and 15(1) thereof, 49 U. S. C. 15(1), which provide the procedure and machinery for investigations, hearings, etc., and for requiring the establishment and maintenance of rates found reasonable as maximum and/or minimum, non-preferential and otherwise lawful by the Interstate Commerce Commission.

Section 307(d), of the same act, 49 U. S. C. 907(d), which gives the Commission power to require through routes and reasonable joint rates partly by rail and partly by water, differentially lower than all-rail rates where justification is found.

Section 320(e) of the same act, which repealed Section 3(e) of the Inland Waterways Corporation Act, as amended by the so-called Denison Act, 45 Stat. 980, but continues in force rates prescribed prior to October 1, 1940, under the Inland Waterways Corporation Act.

Also involved is the Constitution, Article 1, Section 9, Clause 6, which provides that no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

## The Nature of the Case and the Rulings of the District Court

The case arose out of an order of the Interstate Commerce Commission in its Docket No. 26712, which was an investigation of existing rates for the through transportation of freight partly by rail and partly by barge from and to various points in the greater Mississippi Valley, these rates being differentially lower than the all-rail rates from and to the same points. The main issue was as to whether these rates or possibly others to be prescribed would be reasonable and otherwise lawful for the future. For the most part

the existing rates were those established over a period of years in purported conformity with orders of the Commission entered, without hearings, in various proceedings under Section 3(e) of the Inland Waterways Corporation Act, as amended by the Denison Act, 45 Stat. 980. In said Docket No. 26712, entitled *Rail and Barge Joint Rates*, the Commission issued an original report, 270 I. C. C. 591, dated July 7, 1948, and a supplemental report, 274 I. C. C. 229, dated June 13, 1949. Therein it prescribed a new system of differentials to be deducted from all-rail rates to make barge-rail rates in most of the territory involved and entered an order June 13, 1949, requiring that they be put into effect on or before November 1, 1949.

The Commission, in prescribing and ordering the rates in No. 26712, acted under authority purportedly contained in Section 307(d) of the Interstate Commerce Act, as amended, 49 U. S. C. § 907 (d), which section, after giving the Commission power to require the establishment of joint rates for rail-water transportation, provides as follows:

> In the case of a through route, where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water.

The railroads contended that the Commission construed this provision as a statement of Congressional policy and a mandate to prescribe differentials in favor of rail-barge routes regardless of whether there were any demonstrable economies in the cost of service in favor of the rail-barge routes, and regardless of any other transportation circumstances or conditions. The record showed that the costs to the carriers were at least as great via rail-barge as via all-rail. The Commission said in its original report that it could not find that there were demonstrable economies in

the rail-barge service which would justify differentials and it appeared that the prescription of differentials rests solely upon the supposed Congressional mandate. The railroads felt that the Commission's construction of the law was in error and in violation of the National Transportation Policy stated in an introductory paragraph of the Interstate Commerce Act, and that the differentials were not "justified" by the evidence. On September 20, 1949, they accordingly instituted this court action, alleging that the Commission's decision was arbitrary, capricious, unconstitutional and otherwise unlawful. Due to the pendency of this proceeding, the Commission postponed the effective date of its order from time to time. It now stands postponed until May 31, 1950. Galveston Chamber of Commerce, Houston Port and Traffic Bureau and the sovereign State of Texas, through the Railroad Commission of Texas, intervened, supporting the railroads and asking similar relief, particularly with respect to rates between New Orleans, La., and interior points west of the Mississippi River. Galveston and Houston are ports of entry and egress for water-borne traffic (export, import, coastwise and intercoastal) handled in competition with New Orleans, which traffic originates at, or is destined to, interior points west of the Mississippi River. The rail-barge rates which the Commission prescribed between New Orleans and the interior points, in arbitrary disregard of its statement that it could not find demonstrable economies in the rail-barge service, would artificially afford competitive advantages for New Orleans' interests, while depriving Houston and Galveston interests of their inherent advantages of location and subjecting them to grave injustice and serious injury. This would be unlawful. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 46.

The intervening complainants above mentioned urged that the Commission was arbitrary in prescribing differential

barge-rail rates for New Orleans, resulting in undue preference of New Orleans and undue prejudice to Galveston and Houston interests, in violation of Section 3(1) of the Interstate Commerce Act, 49 U. S. C. § 3(1); and that such rates would bear an unreasonable relation to the rates between Galveston and Houston, on the one hand, and the interior points on the other, and be below reasonable minima, in violation of Section 1(5)(a) of that Act; also the Commission failed to find whether the base rates from which the differentials were to be deducted were reasonable either as maxima or minima, or were otherwise lawful as bases for rail-barge rates. They contended that the Commission's reports and its order lacked findings and conclusions essential to their constitutional and statutory validity, citing cases such as the following: *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499, 504, 510; *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 488; *Eastern-Central Assn.* v. *United States*, 321 U. S. 194, 211.

The intervening complainants urged that Finding 2 of the Commission was arbitrary because the proviso at the end of the finding proceeds to determine barge-rail rates between New Orleans and the interior west by a test which takes into account only the rail portion of the through haul and that portion only where it exceeds a certain measure. They contended that the cost of the through barge-rail haul with relation to the cost of the all-rail haul should be determinative.

The intervening complainants urged that Finding 1 of the Commission was arbitrary, because it contains on proper proviso for testing certain rates, although the necessity for such is recognized by Finding 2.

Article 1, Section 9, Clause 6, of the Constitution provides that no preference shall be given by any regulation of com-

merce or revenue to the ports of one State over those of another. The intervening complainants accordingly urged that if it is correct to construe section 307(d) of the Interstate Commerce Act as a mandate for differential rates, regardless of transportation conditions, that provision of law is unconstitutional because it then means that States having ports served by inland waterways to and from the interior shall be given an artificial advantage over States not having ports served by such waterways. It is understood that the provision of the constitution mentioned embraces any description of legislation looking to a direct privilege or preference of the ports of one State over those of another. See *Pennsylvania* v. *Wheeling and Belmont Bridge Co.*, 18 Howard 421.

By prescribing rates not justified by the relative costs, the Commission would violate the National Transportation Policy declared on the opening pages of the Interstate Commerce Act. These rates would be a burden on the economy of the nation and would unlawfully divert traffic from the railroads to the barge-rail routes. The barge-rail carriers with their higher operating costs would have lower rates than the all-rail lines at the expense of shippers and the public.

The intervening complainants prayed that, upon final hearing of the cause, the Court adjudge that the order of the Interstate Commerce Commission to have been predicated upon an unconstitutional statutory provision, or a misconstruction of the Interstate Commerce Act, unlawful, beyond the power of the Commission, arbitrary, capricious, without rational basis, unsupported by essential findings, and contrary to and without support in the evidence; and that a decree be entered setting aside, annulling, suspending, and perpetually enjoining the enforcement, operation, and execution of said order as to the rates from

and to New Orleans, and that interveners have such further relief as might be deemed proper by the Court. They asked that the Commission's case be remanded to the Commission for action respecting the existing rates not inconsistent with the Court's decision.

The Court, specifically deciding some very important points against the intervening complainants, dismissed the case. It is sincerely felt that the Court was wrong in doing so.

Copies of the court's opinion and Findings of Fact and Conclusions of Law appear as Appendices Nos. 1 and 2 hereto.[1]

**Questions of Great Substance and Importance Are Involved**

Many new questions of law are presented by this case. The question of whether the Commission misconstrued the differential provision of Section 307(d) of the Interstate Commerce Act will no doubt affect the barge-rail rate structure for years to come. It is a matter of prime importance, because if barge-rail routes are required to perform wasteful transportation, the public as well as shippers not in position to use such routes will have to foot the bill. It is a matter of prime importance not only to the railroads which would have to give up much of the traffic and revenue to competing forms of transportation, but to Galveston and Houston interests who compete with New Orleans for the heavy traffic from and to the interior points west of the Mississippi River.

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[1] (Clerk's Note.—The Opinion of the District Court is printed as an appendix to the Statement as to Jurisdiction in the case of *The Alabama Great Southern Railroad Co., et al.* v. *United States, et al.*, No. 748, and is not reprinted here.)

For New Orleans to have an advantage over Galveston and Houston regardless of transportation conditions is a very serious matter.

Whether the inferior service of the barge-rail routes is justification for differentials, regardless of the relative cost of service, is a question of far-reaching effect.

The question whether the Commission may test barge-rail rates from and to New Orleans by considering only the rail portion of the through haul is presented. If the Commission correctly construed the differential provision of Section 307(d) as a mandate for differentials regardless of transportation conditions, a grave question of constitutionality affecting Galveston, Houston and the rights of the sovereign State of Texas is involved.

The case is plainly one which affects the national transportation economy, as well as rights of individual shippers, localities and ports. The questions involved are substantial and important.

Respectfully submitted,

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